

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

Case No. 2:23-cv-01495-JHC

**AMAZON’S REPLY IN SUPPORT OF
AMAZON’S MOTION TO SEAL
PLAINTIFFS’ MOTION TO COMPEL
BRIEFING AND EXHIBITS**

Amazon seeks to seal narrowly-tailored categories of confidential information, including, where possible, through limited redaction. Plaintiffs agree that much of what Amazon seeks to seal is appropriate for sealing. The remaining items in dispute—the organization of specific business units, information about non-party employees, insights into Amazon’s data practices, and information regarding the internal business decisions made as a result of foreign investigations—are no different. As Amazon explained in its Motion, disclosure of this information would competitively harm Amazon, invite misuse by malicious actors, and could expose Amazon’s former and current employees to embarrassment or annoyance. Fed. R. Civ. P. 26(c).

There is therefore ample “good cause” to seal the remaining material at issue—the standard the parties agree applies to Amazon’s requests regarding Plaintiffs’ non-dispositive

1 Motion to Compel. “[T]he public has less of a need for access to court records attached only to
 2 non-dispositive motions because those documents are often unrelated, or only tangentially
 3 related, to the underlying cause of action.” *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179
 4 (9th Cir. 2006) (cleaned up). This is plainly the case with Plaintiffs’ Motion: The Motion itself
 5 did not address any substantive issue in the case. Rather, documents filed in support of it were
 6 aimed at showing the history of the parties’ discovery negotiations or justifying Plaintiffs’
 7 requests for additional materials as not covered by the parties’ agreements. The Court should
 8 seal and redact the limited information Amazon seeks to keep confidential.

9 **I. Updated Positions on Documents Subject to this Motion.**

10 In the interest of narrowing the items in dispute, Amazon has reviewed the materials
 11 subject to its motion in light of Plaintiffs’ Opposition (including information first provided there,
 12 *see* Pltfs.’ Opp’n, Dkt. 387 at 12-13 & n.4). Amazon has attempted to further narrow its sealing
 13 requests where it is able to do so without compromising sensitive business information and
 14 employees’ private information. In particular:

- 15 • Amazon withdraws its requests to seal: Ex. A (Dkt. 332-01), Ex. I (Dkt. 332-9), and Ex. J
 16 to the Motion (Dkt. 332-10); Amazon’s Opposition (Dkt. 347); and the Declaration of
 17 Katherine Trefz (Dkt. 351);
- 18 • Amazon narrows its requested redactions for other documents: for the Motion (Dkt. 331),
 19 removing the redaction at pages 10:21-11:1; for Ex. B (Dkt. 332-02), narrowing the
 20 redactions on the top of page 3 to include only the words between “identified” and the
 21 end of the parenthetical (but keeping the agreed redactions on the bottom of page 3 and
 22 page 4); for Ex. C (Dkt. 332-03), removing the redaction on the last page.

23 An updated chart that identifies Amazon’s understanding of the items ripe for decision is
 24 attached to this pleading as its Appendix. Amazon includes with its revised Proposed Order
 25 updated versions of Dkts. 331, 332-02, and 332-03 to reflect the above-noted narrowing.

II. Plaintiffs Agree Certain Exhibits Can Be Sealed.

Plaintiffs do not oppose Amazon’s requests to seal Exhibits D, E, F, G, L, M, or N to Plaintiffs’ Motion, Exhibit A to Plaintiffs’ Reply, or discussion of Exhibit N on pages 13-14 of Plaintiffs’ Motion. Accordingly, and considering the good cause for sealing these documents, *see* Dkt. 376 at 5-6, the Court should order these documents sealed.

III. There Is Good Cause to Redact Other Portions of the Briefing and Selected Exhibits to Plaintiffs’ Motion.

As to the remaining items at issue—Exhibits B, C, H, and O to the Motion, and quotations in Plaintiffs’ Motion of excerpts from Exhibits B, D, E, F, G, L, and M—Amazon requests that certain information continue to be redacted. As Amazon previously explained, these documents represent confidential or sensitive information that could harm Amazon’s business or its employees.

A. Granular information about Amazon’s employees and how Amazon structures its business units is confidential.

Plaintiffs first take issue with Amazon’s request to seal mentions of specific Amazon employees and business units, including in Exhibits C, H, & O. Plaintiffs claim that this information is simply “not confidential” because—according to Plaintiffs—Amazon discloses this information publicly. Dkt. 387 at 6, 9. This is incorrect.

First, to the extent Plaintiffs argue that the information Amazon seeks to seal is already public, such a claim is belied by Plaintiffs’ own actions. Plaintiffs appear to now argue that *all* of the information contained in Exhibit C was publicly disclosed because one relevant employee’s title is publicly available on LinkedIn. But the portions of Exhibits C, H, and O that Amazon seeks to redact all reflect information Plaintiffs demanded Amazon provide *because* they were not able to find it on their own, either publicly or in the trove of Amazon confidential information they already had. Trefz Decl. ¶¶ 3-5. And with respect to Plaintiffs’ arguments about Amazon’s sealing positions for *different* information in connection with a *different* non-

1 dispositive motion, *see* Dkt. 387 at 6, the fact that Amazon was willing to forgo sealing with
2 respect to information filed in a different context does not constitute an agreement that Amazon
3 views all arguably similar information as non-confidential.

4 Second, Amazon does not seek to redact merely the names of employees or business
5 units; rather, each of Exhibits C, H, and O reflect granular information about the identified
6 employees, business structures, and/or internal methods for handling data. Courts often order
7 redaction of the identification of third-party employees—particularly when that identification is
8 coupled with substantive information. *See, e.g., Stepien v. Raimondo*, 2024 WL 4043589, at
9 *25-26 (W.D. Wash. Sept. 4, 2024) (continuing redaction of third-party employee’s name in
10 connection with dispositive motion); *Gnassi v. Toro*, 2022 WL 3867376, at *3 (W.D. Wash.
11 Aug. 30, 2022) (allowing redaction of third-party employees’ names). And as Amazon noted in
12 its opening brief, detailed confidential information about internal business organization is
13 regularly sealed. *See* Dkt. 376 at 5, 7.

14 The information reflected in the requested redactions in Exhibits C, H, and O is
15 competitively sensitive, and revealing it presents a risk that competitors and malicious actors will
16 use it to Amazon’s detriment. 2d Roach Decl. ¶¶ 3-4. For example, Exhibit C explains the
17 internal structure (including which unit reports to which) and reorganization of several different
18 business units. It explains which specific employees would have had exposure to specific
19 substantive economic studies Amazon undertook, and when those individuals would have done
20 so. Exhibit O also provides granular detail about the reporting and organization structure of
21 specific business units, including which specific employees led them and when. And both
22 Exhibit H and Exhibit O indicate how Amazon has maintained the data for a given employee.
23 This information may encourage attempts to reverse-engineer Amazon’s process for data
24 retention, a confidential policy that, if broadly disclosed, could provide nefarious actors insight
25 into what they might expect to find in Amazon’s systems for any given employee. It is unclear
26 why the public needs access to the particular names of employees referenced in these exhibits;

1 Plaintiffs’ substantive point (that Amazon had limited data for some former employees) was
 2 made by referencing the associated data volume, which Amazon has not sought to redact.

3 **B. How Amazon structures and maintains its internal data is confidential.**

4 Plaintiffs also argue that the Court should not seal mention of specific tools and databases
 5 internal to Amazon for managing and accessing certain categories of data, including in Exhibits
 6 B, O, and in Plaintiffs’ Motion describing Exhibits B and D. This is exactly the type of
 7 information that courts typically seal. It is almost uncontestable that disclosure of information
 8 about Amazon’s internal data sources—including its repository of *all of its employee*
 9 *evaluations*—will make those sources a greater target of malicious actors looking to harm
 10 Amazon or its employees. Amazon faces millions of attacks on its data systems every day. *See*
 11 James Rundle, *The AI Effect: Amazon Sees Nearly 1 Billion Cyber Threats a Day*, Wall St. J.
 12 (Nov. 21, 2024), [https://www.wsj.com/articles/the-ai-effect-amazon-sees-nearly-1-billion-cyber-](https://www.wsj.com/articles/the-ai-effect-amazon-sees-nearly-1-billion-cyber-threats-a-day-15434edd)
 13 [threats-a-day-15434edd](https://www.wsj.com/articles/the-ai-effect-amazon-sees-nearly-1-billion-cyber-threats-a-day-15434edd). Giving potential attackers insight into not only the existence of a data
 14 system, but also the specific *name and purpose* of that system and what an attacker is likely to
 15 find there, provides malicious actors with a leg up on fashioning sophisticated attacks. Both for
 16 this reason and because of competitive concerns, the identification and description of data
 17 sources are regularly sealed. *E.g.*, *Floyd v. Amazon.com Inc.*, 2024 WL 1533217, at *1 (W.D.
 18 Wash. Apr. 9, 2024) (sealing information regarding “internal systems and processes for
 19 protecting data”); *DotStrategy Co. v. Meta Platforms Inc.*, 2021 WL 5978328, at *1-2 (N.D. Cal.
 20 Nov. 18, 2021); *Lathrop v. Uber Tech., Inc.*, 2016 WL 9185002, at *2 (N.D. Cal. June 17, 2016).
 21 This Court should order mentions of Amazon’s data systems in Exhibits B and O, as well of
 22 discussions of Exhibits B and D on page 3 in Plaintiffs’ Motion, redacted.

23 **C. The excerpts of personnel reviews cited in Plaintiffs’ Motion are confidential.**

24 Although Plaintiffs do not oppose sealing the personnel reviews themselves, Plaintiffs
 25 argue that discussion in their Motion of three personnel reviews for Amazon’s employees should
 26 not be redacted because these excerpts are not confidential. Amazon has explained that it treats

1 its personnel reviews as some of the most confidential and sensitive documents in its possession.
 2 *See, e.g.*, Dkt. 273 (8/28/2024 JSR) at 38; Roach Decl. ¶ 6. The overwhelming majority of
 3 Amazon’s employees do not have access to these specific documents, let alone the general
 4 public.

5 Plaintiffs suggest that the portions of these confidential reviews they quoted in their
 6 Motion constitute non-confidential information about a particular employee’s role. A read of the
 7 Motion makes clear that is not the case: Plaintiffs quote from these documents not only a
 8 particular employee’s roles and responsibilities, but also the reviewer’s evaluation and
 9 enumeration of the challenges facing that employee and their teams. *See* Dkt. 331 at 4-5.
 10 Plaintiffs seek to unseal that information and the associated names of the employees. In addition
 11 to revealing confidential information about Amazon’s business, this sort of employee-specific
 12 information—used here by Plaintiffs to tie particular non-party employees to conduct Plaintiffs
 13 allege is illegal, *id.* at 5—is well within the scope of confidential information appropriate for
 14 sealing. *See* p. 4, *supra*.

15 Plaintiffs also note that one of Amazon’s redactions on page 5 of Plaintiffs’ Motion was
 16 publicly filed verbatim earlier in the case. But in that previous filing, Plaintiffs obscured which
 17 employee the document was referring to (identifying them only as an “employee”). *Compare*
 18 Dkt. 331 at 5, *with* Dkt. 273 at 22 n.9. Plaintiffs now seek to identify the specific employee
 19 referenced, an unnecessary level of detail that could subject that non-party employee to
 20 embarrassment or annoyance. The Court should order the discussions of Exhibits E, F, and G on
 21 pages 4-5 of Plaintiffs’ Motion redacted.

22 **D. The excerpts of Amazon’s promotional guide cited in Plaintiffs’ Reply are**
 23 **confidential.**

24 Plaintiffs also contend that discussion of Amazon’s guide to promotions in their Reply
 25 should not be redacted. (They do not contest sealing the document itself.) But the excerpts
 26 Plaintiffs quote—exactly how Amazon structures an employee evaluation, and the concrete steps

1 and data that the guide demands—are the very things that provide insight into how Amazon
 2 values and evaluates its employees. No portion of this document is publicly available, and for
 3 good reason: disclosure would provide competitors with information about how Amazon
 4 prioritizes and values information, as well as how it assesses a core competitive advantage—its
 5 employees. The Court should order the discussion of Exhibit A to Plaintiffs’ Reply redacted for
 6 that reason.

7 **E. Discussions of business decisions made pursuant to foreign competition**
 8 **investigations are confidential.**

9 Finally, Plaintiffs argue that their discussion, in their Motion, about actions Amazon took
 10 in response to certain foreign investigations need not be sealed. Quotations from Exhibit L and
 11 M on pages 10 and 11 of Plaintiffs’ Motion continue to be appropriate candidates for sealing.
 12 Contrary to Plaintiffs’ assertion, the cited passages *do* discuss specific changes Amazon
 13 considered and business strategies Amazon adopted in response to these investigations. *See* Dkt.
 14 331 at 10. While Amazon can agree that mention of Amazon’s commitments to the European
 15 Commission (from page 10 to page 11 of Plaintiffs’ Motion) can be unsealed because Plaintiffs
 16 represent that this information solely relies on a public document, the other discussions reflect
 17 confidential business deliberations by Amazon employees. Disclosure of this information could
 18 harm Amazon’s competitive position and current and future investigations, including by making
 19 clear to competitors the specific considerations Amazon weighs in making these sensitive
 20 business decisions, as well as the potential decisions themselves, whether implemented or not.

21 **CONCLUSION**

22 Amazon respectfully requests that the Court grant Amazon’s Motion to Seal and order
 23 that the above-described documents be filed under seal or redacted.

24 //

25 //

1 DATED this 31st day of December, 2024.

2 [I certify that this memorandum contains 2,095
3 words, in compliance with the Local Civil Rules.]

4 **MORGAN, LEWIS & BOCKIUS LLP**

5 By: s/ Patty A. Eakes
6 Patty A. Eakes, WSBA #18888
7 Molly A. Terwilliger, WSBA #28449
8 1301 Second Avenue, Suite 3000
9 Seattle, WA 98101
10 Phone: (206) 274-6400
11 Email: patty.eakes@morganlewis.com
12 molly.terwilliger@morganlewis.com

13 **WILLIAMS & CONNOLLY LLP**

14 Heidi K. Hubbard (*pro hac vice*)
15 John E. Schmidlein (*pro hac vice*)
16 Kevin M. Hodges (*pro hac vice*)
17 Jonathan B. Pitt (*pro hac vice*)
18 Edward C. Reddington (*pro hac vice*)
19 Carl R. Metz (*pro hac vice*)
20 Katherine A. Trefz (*pro hac vice*)
21 Carol J. Pruski (*pro hac vice*)
22 680 Maine Avenue SW
23 Washington, DC 20024
24 Phone: (202) 434-5000
25 Email: hhubbard@wc.com
26 jschmidlein@wc.com
khodges@wc.com
jpitt@wc.com
ereddington@wc.com
cmetz@wc.com
ktrefz@wc.com
cpruski@wc.com

COVINGTON & BURLING LLP

Thomas O. Barnett (*pro hac vice*)
Kate Mitchell-Tombras (*pro hac vice*)
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Phone: (202) 662-5407
Email: tbarnett@cov.com
kmitchelltombras@cov.com

Attorneys for Defendant Amazon.com, Inc.